

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

RED BARN MOTORS, INC.,	*	
DONALD B. RICHARDSON, and	*	CIVIL
BARABARA A. RICHARDSON	*	ACTION NO.: <u>3:13-CV-00778-BAJ-RLB</u>
	*	
VERSUS	*	
	*	
NEXTGEAR CAPITAL, INC.,	*	
as successor-in-interest to	*	
DEALER SERVICES CORPORATION,	*	
and LOUISIANA'S FIRST CHOICE	*	
AUTO AUCTION, L.L.C.	*	
* * * * *		

**MEMORANDUM IN SUPPORT OF MOTION FOR ORAL HEARING**

NOW INTO COURT, through undersigned counsel, come Plaintiffs Red Barn, LLC (hereinafter, "Red Barn"), Donald Richardson, and Barbara Richardson (hereinafter collectively referred to as "the Richardsons"), who respectfully submit this Memorandum in Support of its Motion for Oral Hearing for the pending *Motion to Transfer* and *Motion to Dismiss* filed by Defendant NextGear Capital, Inc. as successor-in-interest to Dealer Services Corporation (hereinafter, "NextGear") and the *Motion to Dismiss* filed by Louisiana's First Choice Auto Auction, L.L.C. (hereinafter, "First Choice") and represent as follows:

**LAW AND ARGUMENT**

**An oral hearing is necessary given the complexity of the issues of fact and law.**

A hearing on the Defendants' motions is appropriate and necessary so that the parties may adequately address the varied and complex issues before the court. As plead in the complaint, Plaintiffs allege that, among other things, the NextGear has engaged in a scheme to charge fees

on non-existent loans in contravention of the agreement (hereinafter, “Agreement”) between the parties. Furthermore, Plaintiffs allege that First Choice has illegally seized and converted Plaintiff’s vehicles in its possession on behalf of NextGear. As can be seen from NextGear’s motions to dismiss and transfer filed by Defendants, the court will have to consider the validity of the forum-selection clause in the Agreement, the Richardsons’ standing to bring their claims, and the applicability of Louisiana’s Additional Default Remedies Act to First Choice. In addition, the Court will have to consider bankruptcy law with regard to whether Plaintiff’s counsel can represent Red Barn and whether Red Barn properly reserved its right to bring this suit. Only through oral argument can each party address the complex nature of the issues before the court.

### **CONCLUSION**

Plaintiffs Red Barn, LLC, Donald Richardson, and Barbara Richardson respectfully request that the court grant its Motion for Oral Hearing and issue an order requiring the parties to appear before the court regarding the pending *Motion to Transfer* and *Motion to Dismiss* filed by Defendant NextGear Capital, Inc., as successor-in-interest to Dealer Services Corporation, and the *Motion to Dismiss* filed by Louisiana’s First Choice Auto Auction, L.L.C.

Respectfully submitted,

/s/ Joshua P. Melder

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***Attorneys for Plaintiffs***

**CERTIFICATE OF SERVICE**

I do hereby certify that I have on the 3rd day of April 2014 served a copy of the foregoing Memorandum in Support of the Motion for Oral Hearing on all counsel of record via electronic service by the court's CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

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/s/ Joshua P. Melder

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**Joshua P. Melder**